There was a further reason why the court could not assist the plaintiff. In my opinion, the weight of judicial authority has been strongly in favour of the theory that the action for money had and received depends on an imputed promise to pay. Lord Summer said in *Sinclair* v. *Brougham*,[5] at page 452:—

"The law cannot *de jure* impute promises to repay, whether for money had and received or otherwise, which if made *de facto*, it would inexorably avoid."

This *dictum* was approved by the House of Lords in *Boissevain* v. *Weil*.[6] The *dictum* must, in my view, be applied in the present case.

If, on the other hand, the action for money had and received is based on the theory that a person who has been unjustly enriched at the expense of another is required to make restitution to that other, then it has to be borne in mind that the courts in England have found it necessary to impose limitations on claims to restitution, and that in England these limitations are imposed by the test of the implied contract. As was said by Lord Radcliffe in *Boissevain* v. *Weil, supra,* at p. 341 with regard to Lord Sumner's *dictum* which is set out above:—

"His principle is surely right whether the action for money had and received does or does not depend on an imputed promise to pay".

So Lord Sumner's *dictum* has to be applied in the present case even if the action for money had and received is based on the principle of unjust enrichment.

It was for the above reasons that I dismissed the plaintiff's claim and ordered the plaintiff to pay the defendant's costs.

Claim dismissed.

Solicitors: *Donaldson & Burkinshaw; Murphy & Dunbar.*

HONG LEONG CO. LTD. v. PEARLSON ENTERPRISES LTD. (No. 2)

[O.C.J. (Ambrose J.) February 29, 1968]
[Singapore — Suit No. 317 of 1965]

Contract — Breach of — Inconvenience — Nominal damages.

Practice and Procedure — Costs — Plaintiff causing inconvenience and delay — Plaintiff to pay costs.

This case was only concerned with the counterclaim which was ordered to be retried by the Federal Court on August 7, 1967 (see [1968] 1 M.L.J. 24). On the retrial the court merely had to decide on the quantum of damages under the first two items of the counterclaim (the other two items having been abandoned).

Held: (1) as to the first item of the counterclaim (namely the difference between the contract price and the lowest possible market price for 281,004 bricks of No. 3 commercial quality) the defendants were not entitled to any damages as the offer made by the plaintiffs on January 8, 1965 was a reasonable one and the defendants should have mitigated their loss by accepting the plaintiffs' offer and no loss would have been suffered by the defendants if they had accepted it;

(2) the second item of the counterclaim for $11,868 (being wages paid to 18 workers for 69 days at $172 per day) could have been avoided as it was the practice in the building trade for bricklayers and carriers to be sent away without pay if there was no work for them to do because of a lack of bricks;

(3) the defendants were, however, entitled to recover nominal damages for breach of contract. The sum of $10 was awarded as nominal damages;

(4) as the plaintiffs by their breach of contract caused the defendants considerable inconvenience and unreasonably delayed the construction of the block of flats, they should pay the defendants the costs of the retrial and the original trial of the counterclaim to be taxed on the lower scale.

CIVIL SUIT.

K. S. Chung for the plaintiffs.

K. A. O'Conner for the defendants.

Ambrose J.: In this case I was only concerned with the counterclaim, which was ordered by the Federal Court on the 7th August, 1967, to be retried.

The Federal Court decided that the plaintiffs were guilty of a breach of the contract of the 18th June, 1964, by reason of their insistence, in their letter of the 15th December, 1964, on immediate payment on delivery at $85 per 1,000 bricks for all bricks to be delivered to the defendants in the future; that in all the circumstances the defendants were entitled to treat the breach as a complete repudiation of the contract so as to discharge the defendants from their obligations under the contract; and that the defendants elected to do so by their letter of the 19th December, 1964.

I did not, therefore, have to decide the question of the plaintiffs' liability and had merely to decide the quantum of damages.

At the commencement of the retrial the defendants abandoned the last two items of their counterclaim and proceeded only with the first two items.

The first item of the counterclaim was the difference between the contract price and the lowest possible market price for 281,000 bricks of No. 3 commercial quality. The contract price was $79 per 1,000 bricks. I found that the lowest possible market price was $79 per 1,000 bricks, which was the price offered by the plaintiffs in their letter of the 8th January, 1965; and that at that date the defendants had not entered into any contract with any other supplier. I found that the defendants did not conclude a contract with Bin Keow Brick Works Ltd. until the 29th January, 1965. It seemed to me that the offer made by the plaintiffs on the 8th January, 1965, was a reasonable one; that the defendants should have mitigated their loss by accepting the plaintiffs' offer; and that no loss would have been suffered by the defendants if

they had accepted it. I accordingly came to the conclusion that the defendants were not entitled to any damages in respect of the first item of the counterclaim.

The second item of the counterclaim was for $11,868, being wages paid to 18 workers for 69 days at $172 a day while the defendants were allegedly waiting for bricks to be supplied by the plaintiffs. It seemed to me that this loss could have been avoided. I accepted the evidence adduced by the plaintiffs that it was the practice in the building trade for bricklayers and brick carriers to be sent away without pay if there was no work for them to do because of a lack of bricks. I accordingly came to the conclusion that the defendants were not entitled to any damages in respect of the second item of the counterclaim.

I held, however, that the defendants were entitled to recover nominal damages for breach of contract: 11 *Halsbury's* Laws of England, 3rd edition, page 220, para. 388. I accordingly awarded the defendants the sum of $10 as nominal damages. It seemed to me that, although the defendants were, in my opinion, not entitled to any damages in respect of the counterclaim, for reasons given above, the plaintiffs by their breach of contract had caused the defendants considerable inconvenience and unreasonably delayed the construction of the block of flats planned by the defendants, and should, therefore, pay the defendants the costs of the retrial and also the original trial of the counterclaim. And I accordingly made an order to that effect and directed that the costs be taxed on the lower scale.

Order accordingly.

Solicitors: *Chung & Co.; Drew & Napier.*

BHAGWAN SINGH v. CHAND SINGH

[O.C.J. (Buttrose J.) March 8, 1968]
[Singapore — Suit No. 2095 of 1965]

Practice and Procedure — Service by post — Whether summons sent by registered post at given address for service sufficient service — R.S.C. 1934, O. IX r. 14.

Practice and Procedure — Summary judgment — Validity of — Summons served by prepaid registered post — Default of appearance of plaintiff at hearing — R.S.C. 1934, O. XIV.

Tort — Trespass — Property seized under writ of seizure of sale — Validity of judgment.

The defendant (plaintiff in Suit No. 1099 of 1962) brought an action against the plaintiff for the recovery of money. The plaintiff having entered an appearance in person on September 13, 1962 to the writ, the defendant took out a summons under O. XIV of the R.S.C. on September 19, 1962 for leave to sign final judgment. A copy of the summons was sent to the plaintiff by prepaid registered post at his address for service on September 21, 1962 and this was returned to tht defendant's solicitors on October 5, 1962 as it still remained unclaimed. It was never in dispute that the plaintiff did not receive the summons and had no notice of the hearing. At the hearing of the summons on September 28, 1962 in the absence of the plaintiff final judgment was entered against him. On October 3, 1962 a writ of seizure and sale was issued by the defendant and the plaintiff's goods were seized. The plaintiff then applied on October 9, 1962 through his solicitor to set aside the "default judgment" and the writ of seizure and sale and an order to that effect was made and the plaintiff was given leave to defend the action on October 29, 1962. Later at the trial of the action the defendant's claim was dismissed with cost. Subsequently in an action by the plaintiff for damages *inter alia* for trespass to his property, the issue before the court was whether the plaintiff's non-receipt of the summons affected the validity of the judgment.

Held, dismissing the action: (1) O. IX r. 14 of the R.S.C. not only allows for the service of process by registered post, but also provided that "where service is made by registered post the time at which the document so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof." This additional factor coupled with the deliberate omission of the words "unless the contrary is proved" which appear in the definition of "service by post" in the Interpretation and General Clauses Ordinance make it clear that a summons in sufficiently served if it is posted in a prepaid registered envelope addressed to the plaintiff at his address for service;

(2) the judgment entered against the plaintiff was regularly and properly obtained and the writ of seizure and sale lawfully issued pursuant to the judgment.

Cases referred to:—

(1) *R.* v. *County of London Quarter Sessions Appeals Committee, Ex parte Rossi* [1956] 2 W.L.R. 800.

(2) *T. O. Supplies (London) Ltd.* v. *Jerry Creighton Ltd.* [1952] 1 K.B. 42.

(3) *R.* v. *Westminister Union Assessment Committee, Ex parte James Woodward & Sons* [1917] W.N. 28.

CIVIL SUIT.

M. N. Samy for the plaintiff.

S. K. Chan for the defendant.

Cur. Adv. Vult.

Buttrose J.: This is an action according to the endorsement on the writ for damages for trespass to the plaintiff's house and seizure of his property therein.

The facts which give rise to these proceedings are as follows:—

On the 29th August, 1962, the defendant issued a writ against the plaintiff (Suit No. 1099 of 1962) for the recovery of principal and interest due on a promissory note. On the 13th September, 1962, the plaintiff entered an appearance to the writ in person and gave his address as No. 130A Cecil Street, Singopore.

On the 19th September, 1962, the defendant took out a summons under Order XIV of the Rules of the Supreme Court for leave to sign final judgment against the plaintiff which was set down for hearing on the 28th September.